

City of Westminster & Holborn Law Society

Response to SRA discussion paper on how to assure the quality of the delivery of legal services

Introduction

1. The City of Westminster and Holborn Law Society ('CWHLS') enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years "the silver circle" down to small high street practices and individual in-house solicitors, including those working for public bodies and government as well as incorporating a number of highly specialist "niche practices" located in London's West End. Our membership includes those who practice at all levels of the profession, those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal.
2. Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, including the Professional Matters Sub-Committee which concentrates on matters such as the regulation of solicitors and the Code of Conduct etc, and the Education and Training Sub-Committee which focuses on matters such as qualification and training of solicitors and the CPD regime.
3. While the response below was a task initially undertaken by the Professional Matters Sub-Committee and the Education and Training Sub-Committee, the paper has been approved by the full Committee as being representative of their views.

Discussion Points

4. We feel that this Discussion Paper ("the Paper") is too heavily focused on the needs of the private sector and approved entities. We think it is important that the SRA does not lose sight of the standards of the 25% of the profession who are not in private practice. Perhaps the SRA could take this into consideration when taking this work forwards.
5. In paragraph 1, the Paper states that the SRA wishes "*to discuss the appropriate balance between responsibilities [for delivering quality of service] of legal professionals and the regulator*". In our view that responsibility must rest primarily with the legal professionals. We are concerned that the SRA as regulator might be considering a role for itself which goes far beyond what is desirable or practical. Paragraph 20 of the Paper indicates that the SRA's "*current thinking*" is that if the correct balance is struck "*It would then not be necessary to measure routinely the standard of legal work itself.*"

6. In our view, it is not appropriate for the SRA to be responsible for measuring the standard of legal work undertaken by solicitors (or other lawyers regulated by the SRA). Paragraph 15 of the Paper recognises that it is not possible to determine quality in legal services “*until the advice, or the service, has been provided*”. Advice could only be checked by examining it against the circumstances of the client to whom it relates. In our view, that would require client consent before it is undertaken.
7. In the context of attempting to ensure quality in legal services, we think the SRA should be concentrating on:
 - a. Setting standards for entry to the profession;
 - b. Setting appropriate standards of professional conduct; and
 - c. Setting requirements for continuing education & training post entry into the profession.
8. In practice the SRA is already involved in all three of these. The Paper seems primarily to be directed at 7c, which is in our view the most difficult and controversial area. We do not therefore comment on 7a. As to 7b, we think it worth commenting that it is already a matter of professional conduct for a solicitor that he should not undertake work which he does not reasonably think himself competent to undertake. That however is subject to an important qualification, namely that a solicitor can still properly undertake that work if it can be reasonably performed by employing a member of the independent Bar. We think the Paper betrays an insularity of approach in not mentioning how the Bar has been a major support to solicitors, and a factor that has often enabled small firms to provide a competitive service to clients, which might otherwise have only been provided by expensive specialist firms. It is important that any proposals from the SRA should not eradicate this principle (which need not be confined to the Bar, but could be extended to other independent specialists). To lose it would be a great loss to many clients, and damage access to justice.
9. As to 7c, we note that the Paper suggests the following possibilities:
 - a. More targeted CPD, whereby the SRA “*should focus on and measure the effectiveness and relevance of the personal development undertaken*” (see paragraph 45 of the Paper). We think the SRA should be wary of being too interfering and prescriptive here. One of the problems in specialisation is that the lawyer may not have a broad enough view of the law to recognise a problem that requires other specialisations. For instance, not all lawyers need to be knowledgeable about financial regulation. However training in the broad outlines of it (even if apparently irrelevant to a lawyer’s day to day practice) may help say transaction lawyers to recognise when they need to take advice from another who is knowledgeable. Equally,

specialist areas of law may change or become redundant, and lawyers will need to retain their flexibility. We have referred above to the fact that lawyers may well provide a very good service by use of a barrister even if they are not themselves experts in a subject.

- b. As regards accreditation of the individual or the firm (see paragraphs 10, 29(d), 40 and 44 of the Paper), CWHLS has long taken a principled and practical objection to the growth of accreditation schemes. They seem to us to be of dubious value and often anti-competitive. They can often become self-serving and self-selecting. They can also become unduly conservative in their concept of relevant specialisms. Traditional divisions of departments within firms can become anachronistic with changing legal or economic conditions or client focus. Equally, similar names of departments within different firms often cover very different practices. Lawyers often have to reinvent themselves during their careers, and that is likely to become more common. Accreditation schemes can be a barrier to this. They are also potentially misleading. Many areas of law (such as pensions or tax) are very complex and constantly changing. Many lawyers and firms will only specialise in particular areas of them. It would be very difficult to ensure consistency of outcomes achieved by accreditation schemes.

At the highest level, organisations such as the Association of Pension Lawyers (APL) are very useful and helpful, but are not (and have no wish to be) accreditation schemes. Members of the APL receive their literature, and can attend their lectures and seminars. The latter quite rightly attract CPD points. All are of a high quality. Not all are relevant to all members. The input is provided voluntarily by members. In a highly complex and specialist area of ever-growing law and regulation this works well.

At a lower level, we are aware for instance of an attempt to set up a Professional Negligence Accreditation scheme. Many would doubt if this would meet a real need. Claims against different professions (e.g., lawyers, accountants, actuaries or medical practitioners) have different characteristics, and require different areas of knowledge. In practice the same barristers are unlikely to be instructed for all of them. The value of accreditation to such a scheme is likely to be considerably less than that to be derived from membership of the APL.

- c. In terms of management standards such as Investors in People, Lexcel and the Specialist Quality Mark (see the last bullet point of paragraph 40), at best they measure the quality of client service rather than the quality of legal service. As paragraph 15 of the Paper recognises, these are not the same thing. Such

standards are also potentially misleading and anti-competitive. There is no reasonably objective method of measuring them which would not involve some sample checking of clients' files. At least one of our well-known member firms has commented that because of the highly sensitive nature of their work, they could not agree to any such examination. That could put them at a competitive disadvantage with other firms whose standard of service was no better but which had a less problematic client base.

10. In terms of how far supervision can help ensure that work is done to the right standard, we believe that the proper application of supervision and mentoring within a law firm can help develop the skills of lawyers and improve the standard of work. It is a good way for clients to get the benefit of the most senior members of a law firm without having to pay for it.
11. However, we believe that this can only help so far, and that ultimate responsibility for the right standard of the work rests with the lawyer responsible for it.
12. We believe a good way of using the talents of solicitors within a law firm is to encourage team/departmental meetings in which a lawyer presents on a topic and invites a discussion. This is not only a good way of training but it also allows for the accumulation of CPD points and raises the profile of the person giving the talk.
13. This could be enhanced by involving professional support lawyers in this process. Furthermore, others within law firms, including secretaries, could feed back at team/departmental meetings of their experiences dealing with clients so that practitioners are holistically aware of the level of service that clients receive.
14. We also think that law firms should develop a centralised resource database in which they can store notes from presentations or handouts from courses. This means others can benefit from the training as well.
15. In terms of the roles set out at paragraph 44 of the Paper, the roles described are good, but we are keen that they should only be allocated if individuals have received proper training so that they are able to carry out these functions. In particular, we are of the view that supervision of trainee solicitors should only be undertaken by individuals who have satisfactorily completed a training course on how to supervise trainee solicitors.
16. We did note, however, that these additional duties are time consuming and that in reality fee-earning lawyers are currently under too much pressure to commit the appropriate time to these roles. This is a problem because the pressure to maximise fee-earning increases with seniority within a law firm and so, in many cases, these individuals are

least able to offer their time. More use could be made of others, perhaps professional support lawyers, to address this.

17. We recognise that the current CPD guidelines are very weak. Possible ways to address this might include ensuring that practitioners spend some time on key areas, such as professional ethics.
18. There is little monitoring of CPD. We consider that, as a minimum, lawyers should sign their own declaration as to CPD compliance within the PC renewal form each year to confirm that they have achieved the correct level of CPD. Currently this tends to be done at an entity level.
19. We would like to put forward the idea of a lawyer's satisfactory attendance at a particular accredited CPD course being reported by the course provider directly to a central database maintained by the SRA (ideally accessible over the internet). It could also be an obligation for individual lawyers to record their own non-accredited CPD activity so that the entirety of the CPD requirement is captured. (In effect, this would require lawyers' training logs to be maintained on a web-based SRA database). This would enable the SRA to monitor in real time the CPD activities of any particular lawyer and would also render unnecessary a CPD compliance declaration as part of the PC renewal process.
20. We agree that there is a need for reform in the area of quality of service and we are keen that the forthcoming SRA consultation is a success. We would therefore be happy for the SRA to continue to engage with us to help progress this work.

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